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OFFICE FOR CIVIL RIGHTS

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August 6, 2020

Via e-mail only to: mrussell@msd.k12.or.us

Dr. Maryalice Russell
Superintendent
McMinnville School District No. 40
800 NE Lafayette Ave.
McMinnville, Oregon

Re: McMinnville School District No. 40
OCR Reference No. 10201050

Dear Dr. Russell:

This letter is to inform you of the disposition of the above-referenced complaint filed against the McMinnville School District No. 40 (district) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complaint alleged that the district discriminates against individuals with disabilities because it has facilities at district sites that are inaccessible. OCR initiated an investigation into the following allegations.

With respect to **Columbus Elementary School**, it was alleged that:

1. there are insufficient accessible parking spaces;
2. one accessible parking space lacks appropriate signage identifying it as an accessible space;
3. the parking lot lacks an appropriately identified van accessible parking space; and
4. the accessible signage on the three accessible parking spaces with signage is placed inappropriately such that it is below the minimum required height.

With respect to **Newby Elementary School**, it was alleged that:

5. there are insufficient accessible parking spaces in one of the two parking lots at the school (Parking Lot A).

With respect to **Duniway Middle School**, it was alleged that:

6. the accessible signage for two van accessible parking spaces is placed inappropriately such that it is below the minimum required height.

With respect to **Memorial Elementary School**, it was alleged that:

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

7. the accessible signage for one accessible parking space is placed inappropriately such that it is below the minimum required height;
8. one of the accessible parking spaces and one access aisle have slopes that are too steep; and
9. there are insufficient accessible parking spaces in one of the three parking lots at the school (Parking Lot C).

With respect to **Patton Middle School**, it was alleged that:

10. there are insufficient accessible parking spaces in one of the parking lots;
11. there are no accessible parking spaces in another parking lot; and
12. three of the accessible parking spaces lack signage.

With respect to **Grandhaven Elementary School**, it was alleged that:

13. the accessible signage for three of the accessible parking spaces is placed inappropriately such that it is below the minimum required height;
14. the accessible signage for one of the accessible parking spaces is placed inappropriately such that it is facing away from the parking space; and
15. the accessible parking space referred to in allegation no. 14 and accompanying access aisle have a slope that is too steep.

With respect to **Wascher Elementary School**, it was alleged that:

16. there are insufficient accessible parking spaces.

With respect to **Evans Street Learning Center**, it was alleged that:

17. the accessible signage for two accessible parking spaces is placed inappropriately such that it is below the minimum required height;
18. one accessible parking space and accompanying access aisle has a slope that is too steep; and
19. the accessible parking space and accompanying access aisle referred to in allegation no. 18 are also not appropriately smooth due to a crack.

With respect to **McMinnville School District Annex**, it was alleged that:

20. the accessible signage for two accessible parking spaces is placed inappropriately such that it is below the minimum required height;
21. the accessible signage for neither of the two accessible parking spaces referred to in allegation no. 20 above identifies the parking space as “van accessible;”
22. one accessible parking spaces and accompanying access aisle are not appropriately smooth due to multiple cracks, gravel, and divots; and
23. one access aisle has a slope that is too steep.

With respect to **Adams Campus**, it was alleged that:

- 24. there are insufficient accessible parking spaces; and
- 25. the two accessible parking spaces lack accessible signage.

With respect to **McMinnville School District First Student Transportation Facility**, it was alleged that:

- 26. there are insufficient “van accessible” parking spaces;
- 27. none of the five accessible parking spaces has an access aisle;
- 28. the accessible signage for all five accessible parking spaces is placed inappropriately such that it is below the minimum required height;
- 29. the accessible signage for one of the five accessible parking spaces is in disrepair; and
- 30. one of the accessible parking spaces is not smooth due to a crack and detritus.

With respect to **McMinnville High School**, it was alleged that:

- 31. there are no accessible parking spaces located in the parking lots adjacent to the following athletics facilities: the baseball field, the Baker football and soccer field, and the softball field.

OCR has the authority to enforce Section 504 of the Rehabilitation Act of 1973 (Section 504). This federal civil rights law prohibits disability discrimination in programs and activities receiving federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibits disability discrimination by public entities. The district receives federal financial assistance from this Department and is a public entity. Therefore, it is required to comply with these laws.

OCR determined that allegation nos. 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 16, 17, 20, 21, and 25 should be dismissed as OCR has received credible information that the allegations have been resolved and are longer appropriate for investigation. OCR determined that the evidence did not support a conclusion that the district failed to comply with Section 504 or Title II with respect to allegation nos. 1, 24, 26, 27, 28, 29, and 30. Finally, prior to completion of OCR’s investigation, the district expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address complaint allegation nos. 8, 9, 15, 18, 19, 22, 23, and 31. OCR considered information and documents provided by the complainant and the district in reaching these determinations discussed below.

Allegation Nos. 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 16, 17, 20, 21, and 25

OCR’s Case Processing Manuel (CPM) provides that OCR will dismiss an allegation where OCR receives credible information that the allegation has been resolved and is no longer appropriate for investigation.

With respect to allegation nos. 2, 3, 12, 21, and 25, OCR initiated an investigation into whether the district had signage as required by the 2010 Standards for Accessible Design (2010 Standards) for its accessible parking spaces at Columbus Elementary School, Patton Middle School, and the Adams Campus. Following the identification of parking spaces that lacked appropriate signage, the district provided OCR with information demonstrating that as of April 2020 it had erected all necessary signage identifying accessible parking spaces that includes the International Symbol of Accessibility and, where relevant, identifying van accessible parking spaces as “van accessible.” As the district has provided information reflecting that the appropriate signage has been installed, OCR is dismissing allegation nos. 2, 3, 12, 21, and 25 as OCR has determined that these allegations have been resolved and are no longer appropriate for investigation.

With respect to allegation nos. 4, 6, 7, 13, 17, and 20, OCR initiated an investigation into whether signs on accessible parking spaces were placed below the minimum height required by the 2010 Standards at Columbus Elementary School, Duniway Middle School, Memorial Elementary School, Grandhaven Elementary School, Evans Street Learning Center, and the McMinnville School District Annex, respectively. Following the identification of improperly placed signs at these locations in February 2020, the district provided information reflecting that in April 2020 it undertook actions to raise each such improperly placed sign to seven feet, which is above the minimum required height of five feet. Given that OCR has received credible evidence that the identified signage is now placed at or above the requisite height, OCR is dismissing allegation nos. 4, 6, 7, 13, 17, and 20 as they have been resolved and are no longer appropriate for investigation.

With respect to allegation no. 14, OCR initiated an investigation into whether, at Grandhaven Elementary School, a sign for an accessible parking space improperly faced away from the parking space. The district provided OCR information, including a photograph, in May 2020 documenting that as of April 2020, it had corrected this problem by installing a differently shaped pole for the sign so it better fit into the base and would not twist away. OCR is dismissing allegation no. 14 as OCR has determined that this allegation is resolved and no longer appropriate for investigation.

With respect to allegation no. 5, OCR initiated an investigation into whether one of Newby Elementary School’s two parking lots, Parking Lot A, contained sufficient accessible parking spaces. The complainant alleged that Parking Lot A had 39 parking spaces and no accessible parking spaces. In May 2020, the district provided OCR with information that identified Parking Lot A as having 37 parking spaces, including one van accessible parking space. In June 2020, the district informed OCR that it had added an additional accessible parking space to Parking Lot A, such that Parking Lot A has 37 total parking spaces, including two accessible parking spaces, one of which is a van accessible parking space. Accordingly, OCR has received credible information that allegation no. 5 is resolved as is no longer appropriate for investigation; OCR is dismissing this allegation.

With respect to allegation no. 10, OCR initiated an investigation into whether there were sufficient accessible parking spaces in one of two parking lots (Parking Lot A) at Patton Middle School. The district provided information in February 2020 that reflected that there were a total of 129 parking spaces and four accessible spaces in Parking Lot A, which was one space short of the five accessible parking spaces required by the 2010 Standards for a parking lot of that size, and that

none of the accessible parking spaces was a van accessible parking space. The district provided information in May 2020 materials documenting that there were then five accessible parking spaces in Parking Lot A and that two of these parking spaces were van accessible parking spaces. Accordingly, OCR is dismissing allegation no. 10 as the allegation has been resolved and is no longer appropriate for investigation.

With respect to allegation no. 11, OCR initiated an investigation into whether there were sufficient accessible parking spaces in the other parking lot (Parking Lot B) at Patton Middle School. The complainant alleged there were no accessible parking spaces in Parking Lot B. The district provided materials in February 2020 which reflected that there were a total of ten parking spaces and two accessible spaces in Parking Lot B, but that neither of these spaces was a van accessible space. In July 2020, the district informed OCR that it had decided not to permit any parking in the area that was formerly known as Parking Lot B and had erected signs to that effect. As a result, this facility is no longer a parking lot and OCR is dismissing allegation no. 11 as resolved and no longer appropriate for investigation.

With respect to allegation no. 16, OCR initiated an investigation into whether there were insufficient accessible parking spaces in the parking lot at Wascher Elementary School. In February 2020 the district provided documents to OCR that indicate that there were a total of 86 parking spaces at the facility and that four of those parking spaces were accessible parking spaces, which is the number required by the 2010 Standards, but that there were no van accessible parking spaces. In May 2020 the district provided information reflecting that the district added two van accessible parking spaces so that the parking lot contains 86 spaces, four of which are accessible spaces, and that two of the accessible spaces are van accessible. Accordingly, OCR is dismissing allegation no. 16 as resolved and no longer appropriate for investigation.

Allegation Nos. 1 and 24

Findings of Fact

With respect to allegation no. 1, the complainant asserted that there were insufficient parking spaces in Columbia Elementary School's parking lot because there are 111 parking spaces in the lot and there are only four accessible parking spaces where there should be five. The district provided information to OCR indicating that there are 90 spaces in this parking lot and four accessible parking spaces, three of which are van accessible parking spaces.

With respect to allegation no. 24, the complainant alleged that there were 71 parking spaces and only 2 accessible parking spaces in the parking lot at the Adams Campus. The complainant identified three lots as part of the Adams Campus. The district provided information indicating that there is only one lot within the perimeter of the facility and that the other two lots are not part of the facility and are outside the perimeter of the facility. The district submitted documents to OCR reflecting that there are 18 parking spaces in this parking lot within the perimeter of the Adams Campus, one of which is a van accessible parking space.

Analysis and Conclusion

The regulation implementing Title II, at 28 C.F.R. § 35.149, provides that no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. Section 504 has a comparable requirement.

According to Section 208.2 of the 2010 Standards, a recipient is required to provide accessible parking spaces in each parking lot in accordance with the following table:

Total Parking Spaces	Accessible Parking Spaces
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5

Section 208.2.4 requires that for every six parking spaces or fraction of six parking spaces required by Section 208.2, the recipient must provide one van accessible space.

With respect to allegation no. 1, OCR investigated whether the number of spaces in the parking lot at Columbia Elementary School met applicable accessibility standards. OCR found that the facility has 90 parking spaces and that four of these spaces are accessible spaces, three of which are van accessible spaces. Based on Section 208.2 of the 2010 Standards, a parking lot with 90 spaces must have four accessible spaces and according to Section 208.2.4 of the 2010 Standards, one of those spaces must be a van accessible space. Accordingly, OCR has determined that there is insufficient evidence to establish a violation of Section 504 or Title II with respect to the issue investigated.

With respect to allegation no. 24, OCR investigated whether there are sufficient accessible parking spaces in the parking lot at the Adams Campus. The lot within the perimeter of the facility has eighteen spaces, and one of those spaces is van accessible. Because Sections 208.2 and 208.2.4 of the 2010 Standards require one accessible space, which is designated as van accessible, for a parking lot with 25 parking spaces, OCR has determined that there is insufficient evidence to establish a violation of Title II or Section 504 with respect to the issue investigated.

Allegation Nos. 26-30

Findings of Fact

The complainant alleged that the McMinnville School District First Student Transportation Facility (facility) does not comply with Section 504 and Title II with respect to the number of van accessible parking spaces, access aisle for accessible parking spaces, signage and surface on accessible parking spaces. The complainant told OCR that the facility is used strictly for bus transportation for the district and that it serves no other purpose. The complainant told OCR he had no other information regarding whether the facility was constructed by, on behalf of, or for the use of the district.

The district provided information reflecting that it does not own or operate this facility and that it only contracts with First Student, Inc. (First Student) who owns the facility, for transportation services. Publicly available information indicates that this facility is owned and operated by First Student and that First Student has an office on the premises.

Analysis and Conclusion

The regulation implementing Title II, at 28 C.F.R. § 35.151, states that each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such a manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction commenced after January 26, 1992. Section 504 has a comparable requirement.

OCR found that the facility is owned and operated by First Student and that the district contracts with First Student for transportation services. The evidence did not demonstrate that the facility was constructed by, on behalf of, or for the use of the district. Therefore, there is insufficient evidence to establish that the district failed to comply with Title II or Section 504 with respect to allegation nos. 26-30.

Allegation Nos. 8, 9, 15, 18, 19, 22, 23, and 31

As above, the regulation implementing Title II, at 28 C.F.R. § 35.149, provides that no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. Section 504 has a comparable requirement.

With respect to allegation nos. 8, 15, 18, and 23, OCR initiated an investigation into whether the slopes in the accessible parking spaces and/or access aisles at Duniway Middle School, Grandhaven Elementary School, Evans Street Learning Center, and McMinnville School District Annex were too steep. The district and complainant identified slopes in the identified parking spaces and access aisles that were steeper than the 1:48 limit imposed by Section 502.4 of the 2010 Standards. Section 502.4 of the 2010 Standards states that changes in level are not permitted in accessible parking spaces or access aisles with an exception for slopes that are less steep than 1:48. Accordingly, OCR has a concern that the district may not be in compliance with Section 504 and Title II in regards to the accessibility of the parking spaces and access aisles at issue in allegation nos. 8, 15, 18, and 23.

With respect to allegation no. 9, OCR initiated an investigation into whether there were sufficient accessible parking spaces in one of the district's accessible parking lots at Memorial Elementary School. The district provided information reflecting that Memorial Elementary School has three parking lots, Parking Lots A, B, and C. The complainant alleged that Parking Lot C had insufficient accessible parking. With respect to Parking Lot A, in February 2020, the district provided information reflecting that there were 27 parking spaces, but no accessible spaces and, correspondingly, no van accessible space. With respect to Parking Lot B, the district provided information in February 2020 that reflects that there were 34 spaces and two accessible spaces, but no van accessible space. With respect to Parking Lot C, the information provided by the district in February reflects that there are fourteen parking spaces and zero accessible spaces, and correspondingly, no van accessible space. In May 2020, the district provided information to OCR indicating that the district has added one van accessible parking space each to Parking Lots A and B. Section 208.2 of the 2010 Standards requires that a parking lot with 27 spaces or 34 spaces contain two accessible parking spaces and Section 208.2.4 of the 2010 Standards requires that one of those spaces is van accessible. With respect to parking lots A and B, the district's addition of a van accessible space to each lot has resolved any concern identified during the investigation with respect to those lots' compliance with Section 504 or Title II. With respect to Parking Lot C, Section 208.2 of the 2010 Standards requires that a parking lot with fourteen spaces contain one accessible space and Section 208.2.4 requires that that space be van accessible. As the investigation to date reflects that Parking Lot C has no accessible parking spaces, OCR has a concern that there is insufficient accessible parking, including van accessible parking in Parking Lot C.

With respect to allegation nos. 19 and 22, OCR initiated an investigation into whether the accessible parking spaces and access aisles at the Evans Street Learning Center and the McMinnville School District Annex were firm, stable, and slip-resistant. The district and complainant identified floor and ground surfaces in the identified parking spaces and access aisles that contained cracks or divots. Based on the investigation to date, OCR has a concern that the district may not be in compliance with Section 504 and Title II in regards to whether the parking spaces and access aisles at issue in allegation nos. 19 and 22 are firm, stable, and slip resistant.

With respect to allegation no. 31, OCR initiated an investigation into whether there are sufficient accessible parking spaces located in the parking lots adjacent to the baseball field, the Baker football and soccer field (Baker field), and the softball field at McMinnville High School. The complainant alleges there are no accessible parking spaces at each of these facilities. The district provided documents to OCR reflecting that these facilities do not have a parking lot, but instead use an adjacent parking lot belonging to another district facility. The district's documents indicate that this lot has an accessible route between it and the softball field and the Baker field, but not the baseball field. Based on OCR's investigation to date, OCR has a concern that the district may have failed to comply with Section 504 and Title II because the district lacks accessible parking on an accessible route to the McMinnville High School baseball field.

Prior to the completion of OCR's investigation, the district requested voluntary resolution of allegation nos. 8, 9, 15, 18, 19, 22, 23, and 31. In accordance with Section 302 of the OCR's CPM, a complaint may be resolved at any time when, before OCR issues its final determination, the recipient expresses an interest in resolving the complaint allegations and OCR determines that it is

appropriate to resolve the issues under investigation with an agreement. In light of the district's willingness to address the concerns identified by OCR comprehensively without further investigation, OCR determined that entering into a voluntary resolution agreement is appropriate with respect to allegation nos. 8, 9, 15, 18, 19, 22, 23, and 31. Further conversations with the district resulted in the district signing the enclosed agreement.

OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by October 30, 2020.

This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court regardless of OCR's determinations.

Please be advised that the district may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The complainant has a right to appeal OCR's determination with respect to allegation nos. 1, 24, 26, 27, 28, 29, and 30 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case with respect to allegation nos. 1, 24, 26, 27, 28, 29, and 30; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The district has the option to submit to OCR a response to the appeal. The district must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the district.

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Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Tina Sohaili, Attorney, at (206) 607-1634 or at tina.sohaili@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement

Cc: Colt Gill, Deputy State Superintendent of Public Instruction (*via e-mail only to:*
colt.gill@state.or.us)

XXXXXX, Facilities and Operations Manager at the McMinnville School District (*via e-mail only to: XXXXX*)